

Public Hearing Transcript - Everett, 6 p.m.

Please note, the opening comments at each hearing were read from a script and therefore are essentially the same at every hearing.

PROCEEDINGS
DEPARTMENT OF LABOR AND INDUSTRIES
PUBLIC HEARING
ERGONOMICS

Howard Johnson Plaza Hotel
Orcas Room
3105 Pine Street
Everett, Washington

DATE: January 6, 2000
REPORTED BY: Paula Somers, CSR
CSR NO.: SO-ME-RP-L535N2
PATRICE STARKOVICH REPORTING SERVICES (206) 323-0919

DEPARTMENT OF LABOR AND INDUSTRIES STAFF IN ATTENDANCE:
MR. TRACY SPENCER - Hearings Officer, Standards Program Manager
MR. MICHAEL WOOD - Hearings Officer, Senior Program Manager
MR. JOSH SWANSON - Administrative Regulations Coordinator
MS. JENNY HAYS - Safety & Health Specialist
MR. RICK GOGGINS - Ergonomist
MR. JOHN PEART - Industrial Hygienist
DR. MICHAEL SILVERSTEIN - Assistant Director for Workplace Safety and Health

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MR. Tracy Spencer

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Ms. Sally Herman
MR. Jay Herzmark
Ms. Mary Maloy
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Dr. Romero Protacio

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CLOSING COMMENTS BY:
MR. Tracy Spencer

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EVERETT, WASHINGTON; THURSDAY, JANUARY 6, 2000 6:55 P.M.

THE ASSEMBLY OF THE PUBLIC HEARING, regarding Ergonomics, convened, MR. Tracy Spencer and MR. Michael Wood, presiding,

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OPENING COMMENTS AND PRESENTATION

MR. SPENCER: Good evening, ladies and gentlemen. I now call this meeting to order.

This is a public hearing being sponsored by the Department of Labor and Industries.

I'm Tracy Spencer, the Standards Manager, and this is Michael Wood, Senior Program Manager in WISHA, and we are representing Gary Moore, Director of the Department of Labor and Industries as the hearings officers.

For the record, this hearing is being held January 6th, 2000, in Everett, Washington beginning at 6:55 p.m., as authorized by the Washington Industrial and Safety Health Act and the Administrative Procedures Act. If you have not already done so, please fill out the sign-in sheet located at the back of the room. This sheet will be used to call forward individuals for testimony and to ensure that you are notified of the hearing results.

For those of you who have written comments that you would like to submit, please give them to Josh Swanson at the back table. We will accept written comments until 5:00 p.m. on February 14th, 2000, for those unable to submit comments today. Comments may be mailed to the Department of Labor and Industries' WISHA Services Division at P.O. Box 44620, Olympia, Washington 98504-4620; emailed to ergorule@lni.wa.gov, or faxed to area code 360-902-5529. Comments submitted by fax must be 10 pages or less.

The court reporter for this hearing is Paula Somers of Starkovich Reporting. Transcripts of the proceedings should be requested and are available from the court reporter. Also, copies of the transcripts will be available on the WISHA home page under ergo within three weeks. Any requests for copies of the written transcript submitted to the department will be forwarded to the court reporter. The court reporter does charge for transcripts.

Notice of this hearing was published in the Washington State Register on December 1st, 1999 and December 15th, 1999. Hearing notices were also sent to interested parties. In accordance with the RCW, notice was also published 30 or more days prior to this hearing in the following newspapers: The Journal of Commerce, the Spokesman Review, The Olympian, The Bellingham Herald, The Columbian, the Yakima Herald-Republic, and the Tacoma News Tribune.

The hearing is being held to receive oral and written testimony on the proposed rules. Any comments received today, as well as written comments received, will be presented to the Director.

Prior to starting the formal hearing, an oral summary of the proposed rules was

given, and a question-and-answer period occurred. Please refer to the handout provided to you at the back door for a copy of the proposed rule.

In order to evaluate the potential economic impact of the proposed rule on small business, the department completed a Small Business Economic Impact Statement in accordance with the Regulatory Fairness Act.

For those of you who have given oral testimony at a previous hearing, you will be called upon after all new testimony has been given. Please keep in mind that we have allowed for a full month to receive written comments, and the cutoff being February 14th, 2000.

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ORAL TESTIMONY

At this time, we will take oral testimony. Please identify yourself, spell your name, and identify who you represent for the record.

Allan Darr? You can just stand up there or come and sit at our table, if you'd like.

MR. DARR: Good evening, my name is Allan Darr, A-l-l-a-n D-a-r-r. I'm representing the Washington State Building and Construction Trades Council, AFL-CIO.

MR. Gary Moore, Director of the Department of Labor and Industries, in addressing this issue, said - I quote - "something has to be done." I will add, something has to be done now. The proposed ergonomics rule recognizes the seriousness of repetitive stress injuries and addresses their prevention in a way that is fair for everyone. This rule makes sense for employers as well as employees.

The booming economy and rising productivity has set a faster pace in our industry in our state. With these developments have come a heightened awareness of repetitive stress injuries. The numbers of workers suffering from stress injuries is staggering. You are aware of them as well as I am.

Lifelong damage from carpal tunnel syndrome, chronic back pain, tendinitis, and other crippling disorders, all of these in many ways are preventable. And this rule, I believe, will prevent them. This rule will cure, cut, and heal these injuries, and they will cut costs by cutting claims. I won't go into the details of the rules because I am centered on the injuries as they relate to human costs.

Business groups who are fighting these rules contend they impose intolerably high costs. These groups would do well to study the experience of companies who have taken steps on their own to reduce repetitive stress injuries.

The drop in worker's compensation claims that followed the creation of voluntary ergonomics programs have convinced companies that these programs may pay for themselves many times over. But you can't enforce voluntary standards, hence the need for this rule.

Organized labor and business should not be fighting over the idea of preventing injuries in the workplace. However, in my industry, the construction industry, it is proven that an employer's driven by the heat and not by the the light. That is, when the heat of costs become too great, they see the light. I would like to join them in a partnership to do the right thing, and I offer them to join me in supporting these standards.

I thank the department and its staff for their long hours and hard work in bringing about a solution to a long-term, serious problem. Thank you very much.

MR. SPENCER: Thank you.
Cathy Wirth?

MS. WIRTH: My name is Cathy Wirth. Is this on? Can you hear me?

MR. SPENCER: I think so.

MS. WIRTH: My name is Cathy Wirth, and I have 13 years' experience as a construction electrician, and also I'm a side practitioner, and I have been aware of the wear and the strain on workers' bodies since day one in the trade.

I don't know how many of my fellow workers can't climb ladders; they can't crawl under things; they can't use their knees. If they had known that kneeling on concrete, kneeling on hard surfaces, was a risk factor, and something needed to be done to change that. If they had been given knee pads, which aren't required, as protective equipment, those kinds of injuries wouldn't have happened.

Let me refer to my notes. Raising the awareness of these risk factors and identifying the alternative methods that decrease the wear and tear on our bodies will have several positive effects. We'll have a longer work life. We have a decreasing work force as it is. We're not throwaway workers; we aren't disposable.

And it's time for the employers to take some responsibility. We need them to step up there and figure these things out, pass the information on to us. They're going to have a positive benefit from it and so will we.

MR. SPENCER: Thank you.

Nora Strothman?

MS. STROTHMAN: Hello. My name is Nora Strothman, and my last name is S-t-r-o-t-h-m-a-n. I'm here this evening simply representing myself as a worker.

I have been working as a gardener for almost 15 years, nine of those were with my current employer. I have never missed a single day's work due to repetitive motion injury. I have missed day's work when I have had an accident. I've had some broken bones, and I've had some torn muscles and ligaments and the like because I'm in one of those caution zone jobs.

But the reason I've never lost a day's work to this repetitive motion is because my particular employer and my supervisor has been very aware of these issues for some time now. And anytime I have injured myself, and I have -- In pruning, I've had tendinitis all up and down; in using loppers, I've had tendinitis in my elbows; I've had a lot of low back pain; I've had bad knees.

But I have been given training; I have been given exercises; I have been given all of the proper equipment; I have been given the knee pads for being on the ground. I've been given everything I needed. And as a result, I'm 47 years old and I hope to work in this job until I retire at age 65.

And what's nice about that is that for every day and for every week and every year that I work, I become a better gardener. I am highly skilled, and I'm highly trained; I'm educated; I continue with my education. I work for the University of Washington, and as a result, I think the taxpayers are getting a lot out of their money from me. And I just want to thank my supervisor for already doing all of this, and in fact, very recently, one month ago, my entire shop was sent to an ergonomics training seminar, and one of your employees -- a couple of your employees were there, and we appreciated that very much.

One of the pieces of information I got that day was on how to better train my own body to withstand some of the heavy lifting and things like that, and I began to realize, you know, as a worker, I need to take personal responsibility myself, also, for being in better shape. And I learned that through this seminar and was given all kinds of resources.

So I have no idea what employers are scared about here. I can't see that any money that's been spent on me that hasn't been given back in full.

Thank you very much.

MR. SPENCER: Thank you.

If you'd like to come up to the table when you testify. Kristen Spexarth? I hope I said that right.

MS. SPEXARTH: You said that very well. Most people don't get that the first time time.

My name is Kristen Spexarth, and you spell that K-r-i-s-t-e-n S-p-e-x-a-r-t-h. And

I'm here also representing myself.

Now, I had a strong interest in this because I am a gardener, and we were looking at the list of hazards, awkward postures, high hand force, highly repetitive motion, repeated impact, heavy, frequent, or awkward lifting, moderate to high vibration. My job includes all of these things. I'm also fortunate to be employed by the University of Washington, and I'm very fortunate to have a supervisor that I do, because she and her senior supervisors have made a very strong effort to inform the gardening staff of hazards and to protect us with equipment and just knowledge. For instance, my coworker mentioned, the ergonomics seminar that we went to last month. It strikes me that so often in this field a person is considered a throwaway worker. As long as the economy is good, people can be siphoned through, and there's no particular loyalty to a worker.

It's a really good day when rules like this start to come into being, because there are injuries on the job, and we need to consider the knowledge and the skill that is part of an individual worker. It isn't something that you can just throw away. There's an accumulation of skill in a job that's meaningful. And if business can begin to understand this and not just consider labor as another commodity, I think we'll be getting somewhere.

And I appreciate the efforts that you guys have done to bring this to their notice. Thank you.

MR. SPENCER: Thank you.

Sally Herman?

MS. HERMAN: Hello. I'm Sally Herman. The last name is spelled H-e-r-m-a-n. I represent Washington State Nurses Association, a professional association that represents over 11,000 registered nurses in this state. We do support the ergonomic rule proposed by the Department of Labor and Industries.

Nationally in all the districts combined, 8.5 out of 100 workers reported nonfatal occupational injuries and illnesses. However, nearly 12 out of 100 nurses in hospitals reported work-related injuries, and 17.3 out of 100 nurses working in nursing homes reported injuries double the rate to all injuries combined.

The vast majority of these nurse injuries are back injuries. Back injuries in nurses are undoubtedly grossly underreported since the statistics are based on workmen's compensation filings, and most initial and minor injuries result in the use of sick time rather than filing workmen's compensation.

I personally have had injuries, low back and upper back injuries. I had a low back injury with the lifting, when it was an unsuspected lift. I work in home health; I have worked in acute care; and I've worked in long-term care; and I'm been in home health for the last 16 years.

When I was injured in the low back, it was in a long-term care facility, and the person that I was lifting, I was transferring her from that chair back to the bed. All of a sudden, she passed out, and there I was with all her weight on me.

There are many injuries in long-term care facilities that are sustained, that are probably never reported, that they use their sick time for. And looking at caregivers within home settings, you see a lot of injuries that aren't reported. So there is a lot of areas where there are caregivers, whether they're hired personally or professionally under a coached program and chore program, or whatever.

Many times they, perhaps, have not been trained as well as they ought to be, and I believe that we can sustain a lot less injury if we are much better protected with the preventive technique and the training. And I think it's so very important. There's more I can say, and probably even given a lot more to do with the different settings in the other programs, but I think it's very important as an individual, and I've seen it over the years - I've been a nurse since 1957 - and I've seen many injuries that have been sustained, and there's a lot of healthcare workers that have sustained soft tissue damage and back injuries, multiple ones, that are unreported, that are too numerous to count.

The healthcare field is an area that there's many injuries that probably anywhere they're properly reported. When you look at the industry and you look at some of the construction workers, there's probably a lot more injuries in health-care workers than you see in many construction workers. So, we do support this proposal.

Thank you.

MR. SPENCER: Thank you.

At this time, is there anybody who signed up to possibly testify who wish to testify at this time?

Okay, Jay Herzmark?

MR. HERZMARK: I need to stand up.

MR. SPENCER: Certainly. Speak up, though, so everybody can hear you.

MR. HERZMARK: Sure. My name is Jay Herzmark - it's H-e-r-z-m-a-r-k - and I'm from the Washington Federation of State Employees. We represent state workers throughout the state.

I just want to talk a little bit about my friend here. This is Ergoman. Some of you have met Ergoman before. Ergoman and I would like to support Labor and Industries' proposed standard, because until Ergoman is mass-produced and available to the general business community, we're going to need a standard. Because unlike most masons, Ergoman has an extremely strong right arm for lifting rock and brick and things like that; and unlike most custodians, Ergoman has a steel cable in his back, so he can lift heavy garbage cans and furniture and things like that

without injuring his back.

And unlike most gardeners, Ergoman has a spring in his wrist, so he can use vibrating tools like string trimmers and chainsaws and things like that, and so he won't have wrist problems over in that side.

And unlike most medical transcriptionists, he has an easily-replaceable wrist unit here, so the employer doesn't have to spend a lot of money on carpal tunnel surgery; they can just replace that.

And unlike the mail sorters where I work, he's got - excuse me for this embarrassing part here - but he's got adjustable-length legs, so he doesn't have to stand at this one fixed bench whether, you know, like some of our mail sorters who are five feet, and some of them are six feet tall, and they all work at the same bench. Ergoman, he can adjust to the bench.

Unlike some of the patient representatives where I work, he's got this long, flexible neck, so he can see around corners because the furniture is kind of poorly placed there, and sometimes it's hard to if there's another patient waiting for him. Unlike, I think, most employees and most workers, Ergoman has no mouth, so he can't complain about all the pain from the work that he does.

And then, finally, I think most employers would like this feature the best, and that is he is this -- you've got this computer built into him, so he's easily programmable for boring, repetitive work.

Thank you very much.

MR. SPENCER: Thank you.

Is there anyone else at this time that wishes to provide testimony on the proposed rules?

MS. MALOY: I do.

MR. TRACY: Okay. Come on forward.

MS. MALOY: My name is Mary Maloy, M-a-l-o-y, and I'm a very proud employee at Group Health Co-op. I'm a shop steward with OPEIU, and I work for a care-giving provider.

I had an on-the-job injury, and I got very good care at Group Health and went to occupational therapy, where I was informed, Oh, yeah, you're the third employee who worked at that workstation with this same exact injury. We've had for three years proposal for ergonomic station at that place, because this is the problem.

That's why you hurt. And that's with a care-giving employer, nonprofit organization. And they still did nothing, until it was necessary to bring in a new computer system

that required a move and a change was anything done. And even now, because of the lack of work room, we are still not given truly ergonomic stations. It has to work within the confines of the space allotted.

So I know that employers feel that these proposals are babysitting tactics and unnecessary. But if care-giving provider/employer finds it, you know, hard to do this -- what's right; it's just doing what's right, what you'd want done for you if it was happening to you, then I think that yes, these proposals are necessary. Thank you.

MR. SPENCER: Thank you.

Again, is there anyone else who would like to testify on the proposals?

MR. WOOTEN: Yes, my name is Don Wootten, Wootten spelled W- two o's, two t's, e-n. I represent WEB pressmen at the Seattle Times, GCIU 767M Union.

This new law that's going to be in effect, this new ruling, is going to be great for us. We have numerous injuries, repetitive injuries. We've had an ergonomacist - I guess that's how you pronounce it - at our pressroom, and he tried to reinvent our arm, so that we can have an extension of our arms, so we wouldn't have certain repetitive injury on the press. Since then, we still have repetitive injuries.

There is a machine that can be bought, has not been bought, and there has not been any other types of practices to limit these RSIs. We call them repetitive shoulder injuries; they also include also your elbows and things of that nature. We have people out right now, and so we're all for this new ruling. We're all for this. We hope that we can work with our employer and limit these repetitive injuries so that we can have greater production and less injuries in our shop, because it makes it a hardship on us as the men that are left working on the presses. So I thank you very much.

MR. SPENCER: Thank you. Okay, one last time, is there anybody else who would like to testify? Come on and come on forward.

MR. PROTACIO: My name is Romero Protacio, and I'm representing the City of Marysville as an employer.

MR. WOOD: You probably need to spell your name, if you would.

MR. PROTACIO: My last name is spelled P- as in Peter-r-o-t- as in Tom-a-c- as in Charlie-i-o.

As an employer in the City of Marysville, I certainly support the intent of the Department of Labor in reducing the injuries caused by the cumulative trauma disorders, repetitive motion disorders, as well as occupational overuse syndromes. However, the City of Marysville has joined with many employers in stating that the proposed ergonomic rules, we impose a costly, time-consuming experiment on all employers without guaranteed results.

I have submitted a written testimony, and I don't want to consume much of the time talking here, but simply telling the Department of Labor our concern about the proposed ergonomic rules and what we want, what the employees want. They say they wanted to have is a thorough study and a thorough evaluation of the program, before its implementation.

One of the conditions of many places would be for the Department of Labor, yes, to implement a pilot study, specifically suggested in the state law, to measure each of the rules' requirements for effectiveness in injury and hazard reduction, implementation cost and ease of compliance before implementation. The other recommendation is outlined in my letter.

MR. SPENCER: Thank you.

Is there anyone else who would like to testify on the proposals?

THE AUDIENCE: (No response.)

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CLOSING COMMENTS

Again, the deadline for sending in written comments is 5:00 p.m. on February 14th, 2000. I want to thank you all for coming and for those of you who testified. This hearing is adjourned at 7:25.

(The hearing concluded at 7:25 p.m.)

CERTIFICATE

STATE OF WASHINGTON)

) ss

COUNTY OF KING)

I, PAULA SOMERS, a duly authorized Notary Public in and for the State of Washington, do hereby certify that this is a true transcript of the Public Hearing regarding Ergonomics; that the said hearing was recorded in shorthand and later reduced to typewriting; and that the above and foregoing is a true and correct transcript of said hearing.

I do further certify that I am not a relative of, employee of, or counsel for either of said parties or otherwise interested in the event of said proceedings.

I HAVE HEREUNTO set my hand and affixed by official seal this 19th day of January, 2000.

Paula Somers, CSR

NOTARY PUBLIC in and for the State of Washington, residing at Renton.

My commission expires 9/29/03.

PATRICE STARKOVICH REPORTING SERVICES (206) 323-0919